

HOUSE BILL NO. 235

INTRODUCED BY R. BROWN

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY PROHIBITING THE USE OF BUSINESS NAME IDENTIFIERS OR OTHER LANGUAGE IN THE NAME, TITLE, OR ASSUMED NAME OF A BUSINESS ENTITY THAT WOULD STATE OR IMPLY THAT THE BUSINESS ENTITY IS A TYPE OF ENTITY OTHER THAN THE TYPE THAT IT IS; DEFINING "BUSINESS NAME IDENTIFIER"; AND AMENDING SECTIONS 30-13-201, 30-13-202, 35-1-308, 35-2-305, 35-4-206, 35-8-103, 35-10-703, AND 35-12-505, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-13-201, MCA, is amended to read:

"30-13-201. Definitions. As used in this part, the following definitions apply:

(1) "Assumed business name" means:

~~(a) any business name other than the full, true, and correct name of a person; or~~

~~—— (b) the full, true, and correct name of a limited liability partnership.~~

(2) "Business name identifier" means a word or words used by a business entity in its name or title that describes the type or form of its business. Business name identifiers include but are not limited to corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, and abbreviations of those terms.

~~(2)(3)~~ "Person" means any individual, partnership, corporation, limited partnership, limited liability company, limited liability partnership, or other association."

Section 2. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name -- when prohibited. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name ~~which~~ that is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the

1 secretary of state, the secretary of state may not register the assumed business name for which
2 application is made.

3 (2) ~~When the applicant is other than a corporation, limited partnership, limited liability company,~~
4 ~~or limited liability partnership, the secretary of state may not register the assumed business name for~~
5 ~~which application is made if the name applied for contains or there is added at the end of the name the~~
6 ~~word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of the words. An~~
7 ~~applicant for an assumed business name may not use a business name identifier that incorrectly states the~~
8 ~~type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it~~
9 ~~is."~~

10

11 **Section 3.** Section 35-1-308, MCA, is amended to read:

12 **"35-1-308. Corporate name.** (1) A corporate name:

13 (a) must contain the word "corporation", "incorporated", "company", or "limited"; the abbreviation
14 "corp.", "inc.", "co.", or "ltd."; or words or abbreviations of similar meaning in another language; ~~and~~

15 (b) may not contain business name identifiers, as defined in 30-13-201, or language that states
16 or implies that the corporation is a business other than a corporation; and

17 ~~(b)(c)~~ may not contain language that states or implies that the corporation is organized for a
18 purpose or purposes other than those permitted by 35-1-114 and its articles of incorporation.

19 (2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in
20 the records of the secretary of state from:

21 (a) the corporate name of another corporation incorporated or authorized to transact business in
22 this state;

23 (b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

24 (c) the fictitious name adopted by a foreign corporation authorized to transact business in this
25 state because its real name is unavailable;

26 (d) the corporate name of a not-for-profit corporation incorporated or authorized to transact
27 business in this state;

28 (e) the corporate name of a domestic corporation that has dissolved, but only distinguishable for
29 a period of 120 days after the effective date of its dissolution; and

30 (f) any assumed business name, limited partnership name, limited liability company name,

1 trademark, or service mark registered or reserved with the secretary of state.

2 (3) A corporation may apply to the secretary of state for authorization to use a name that is not
3 distinguishable in the secretary of state's records from one or more of the names described in subsection
4 (2). The secretary of state shall authorize use of the name applied for if:

5 (a) the other corporation consents to the use in writing and submits an undertaking in a form
6 satisfactory to the secretary of state to change its name to a name that is distinguishable in the records
7 of the secretary of state from the name of the applying corporation; or

8 (b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court
9 of competent jurisdiction establishing the applicant's right to use the name applied for in the state.

10 (4) A corporation, limited liability company, or limited partnership may use the name, including the
11 fictitious name, of another domestic or foreign corporation, limited liability company, or limited partnership
12 that is used in this state if the other corporation, limited liability company, or limited partnership is
13 incorporated or authorized to transact business in this state and the proposed user corporation, limited
14 liability company, or limited partnership:

15 (a) has merged with the other corporation, limited liability company, or limited partnership;

16 (b) has been formed by reorganization of the other corporation, limited liability company, or limited
17 partnership;

18 (c) has acquired all or substantially all of the assets, including the corporate name, of the other
19 corporation, limited liability company, or limited partnership; or

20 (d) has obtained written permission from the other corporation, limited liability company, or limited
21 partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

22 (5) This chapter does not control the use of fictitious names."
23

24 **Section 4.** Section 35-2-305, MCA, is amended to read:

25 **"35-2-305. Corporate name.** (1) (a) A corporate name may not contain language stating or
26 implying that the corporation is organized for a purpose other than that permitted by 35-2-117 and its
27 articles of incorporation.

28 (b) A corporate name may not contain business name identifiers, as defined in 30-13-201, or other
29 language that states or implies that the corporation is an entity other than a nonprofit corporation.

30 (2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in

1 the records of the secretary of state from:

2 (a) the corporate name of a nonprofit or business corporation incorporated or authorized to do
3 business in this state;

4 (b) a corporate name reserved or registered under Title 35, chapter 1, 35-2-306, or 35-2-307;

5 (c) the fictitious name of a foreign business or nonprofit corporation authorized to transact
6 business in this state because its real name is unavailable;

7 (d) the corporate name of a domestic business or nonprofit corporation that has been dissolved,
8 but only distinguishable for a period of 120 days after the effective date of the dissolution; or

9 (e) any assumed business name, limited partnership name, limited liability company name,
10 trademark, or service mark registered or reserved with the secretary of state.

11 (3) A corporation may apply to the secretary of state for authorization to use a name that is not
12 distinguishable in the secretary of state's records from one or more of the names described in subsection
13 (2). The secretary of state shall authorize use of the name applied for if:

14 (a) the other corporation consents to the use in writing and submits an undertaking in a form
15 satisfactory to the secretary of state to change its name to a name that is distinguishable in the records
16 of the secretary of state from the name of the applying corporation; or

17 (b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court
18 of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

19 (4) A corporation may use the name, including the fictitious name, of another domestic or foreign
20 business or nonprofit corporation that is used in this state if the other corporation is incorporated or
21 authorized to do business in this state and the proposed user corporation:

22 (a) has merged with the other corporation;

23 (b) has been formed by reorganization of the other corporation; or

24 (c) has acquired all or substantially all of the assets, including the corporate name, of the other
25 corporation.

26 (5) This chapter does not control the use of fictitious names."
27

28 **Section 5.** Section 35-4-206, MCA, is amended to read:

29 **"35-4-206. Corporate name.** The name of a domestic or foreign professional corporation:

30 (1) (a) (i) except as provided in subsection (1)(b), must contain the words "professional

corporation" or the abbreviation "P.C."; and

(ii) may not contain any other words to indicate the type of business that it is other than "professional corporation" or "P.C."; unless

(b) the name of a foreign corporation contains the words "professional services" or "P.S.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of ~~such~~ the other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make ~~such~~ the name distinguishable from ~~such~~ the other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state.

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation."

Section 6. Section 35-8-103, MCA, is amended to read:

"35-8-103. Name. (1) (a) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co."

(b) The name of a limited liability company as set forth in its articles of organization may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that

1 the limited liability company is a business other than a limited liability company.

2 (2) A limited liability company name must be distinguishable on the records of the secretary of
3 state from:

4 (a) the name of any business corporation, nonprofit corporation, limited partnership, or limited
5 liability company organized or reserved under the laws of this state;

6 (b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited
7 partnership, or foreign limited liability company registered or qualified to do business in this state;

8 (c) any assumed business name, limited partnership name, trademark, service mark, or other name
9 registered or reserved with the secretary of state; and

10 (d) the corporate name of a domestic corporation that has dissolved but only for a period of 120
11 days after the effective date of its dissolution.

12 (3) The use of the name of a limited liability company by another limited liability company or
13 limited partnership is governed by 35-1-308.

14 (4) Contests over names registered under this section are governed by 35-1-310."
15

16 **Section 7.** Section 35-10-703, MCA, is amended to read:

17 **"35-10-703. Name of limited liability partnerships.** (1) The name of a limited liability partnership
18 must contain the words "limited liability partnership", the abbreviation "l.l.p." or "llp", or other words or
19 abbreviations that may be required or authorized by the laws of the state in which the partnership is
20 formed, including without limitation "professional limited liability partnership" or the abbreviation "p.l.l.p."
21 or "pllp".

22 (2) The name of a limited liability partnership may not contain business name identifiers, as defined
23 in 30-13-201, or other language that states or implies that the limited liability partnership is other than a
24 limited liability partnership."
25

26 **Section 8.** Section 35-12-505, MCA, is amended to read:

27 **"35-12-505. Name.** (1) The name of each limited partnership as set forth in its certificate of
28 limited partnership:

29 (a) must contain the words "limited partnership", the abbreviation "l.p.", or the designation "lp";

30 (b) may not contain the name of a limited partner unless:

1 (i) it is also the name of a general partner; or

2 (ii) the business of the limited partnership had been carried on under that name before the

3 admission of that limited partner;

4 (c) may not contain business name identifiers, as defined in 30-13-201, or other language that

5 states or implies that the limited partnership is other than a limited partnership; and

6 ~~(e)~~(d) must be distinguishable on the record from the name of any corporation, limited partnership,

7 or limited liability company organized under the laws of this state or licensed or registered as a foreign

8 corporation or limited partnership in this state.

9 (2) The use of a limited partnership's name by another corporation, limited partnership, or limited

10 liability company is governed by 35-1-308."

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